



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,989	09/24/2003	Donald E. Weder	8403.822	4221

30589 7590 03/07/2005

DUNLAP, CODDING & ROGERS P.C.
PO BOX 16370
OKLAHOMA CITY, OK 73113

EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,989

Applicant(s)

WEDER ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

The terminal disclaimer filed on 22 December 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,523,303 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Charrin (FR 2619698) in view of Ward (US 2,894,258).

As to Claims 1, 7, and 8, Charrin discloses a decorative cover (Figs. 1-4) for supporting leaves and petioles of a plant having substantial horizontal growth comprising a base (region around leadline of 3 in Fig. 4) having a closed lower end, an open upper end, an outer peripheral surface, an object retaining space and a horizontal axis; a decorative border (region around 7 of Figs. 2-4) connected to the base and extending open upper end of the base so as to be disposed at an upward and outward angle with respect to the open upper end of the base (angle shown in Figs. 3 and 4), the border having a curvilinear, undulating configuration (shown in Figs. 3 and 4) which permits the border to hold, support and cushion individual leaves when the plant is

Art Unit: 3643

disposed in the object retaining space. Not disclosed is the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. Ward, however, discloses growing African violets (col. 1 lines 55-60) that would have the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases due to the weight of the leaves and petioles of the plant positioned thereon (inherent in that the weight of the plant leaves would exert a force downward on the border causing the angle to change) so the border moves to a compressed condition. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Charrin by using an African violet as disclosed by Ward so as to meet consumer demand.

As to Claim 2, Charrin as modified by Ward further disclose a cover constructed of a flexible sheet, non-shape sustaining material (Fig. 1 of Charrin) and the cover that is flexible, resilient, and shape-sustaining (Fig. 4 of Charrin).

As to Claim 3, Charrin as modified by Ward further disclose polymeric film (abstract in English of Charrin).

As to Claim 4, Charrin as modified by Ward further disclose coloring (Fig. 4 of Charrin).

As to Claim 5, Charrin as modified by Ward further disclose a plurality of bondingly connected overlapping folds (inherent in cover of Charrin in Fig. 4).

As to Claim 6, Charrin as modified by Ward further disclose the sheet a thickness of from 0.1 to 30 mil (inherent in cover of Charrin in Fig. 4).

As to Claims 9 and 10, the limitations of Claim 1 are disclosed as described above. Not disclosed is the angle of the border relative to the horizontal axis from 40 to 55 degrees. It would

Art Unit: 3643

have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Charrin as modified by Ward by having the angle of the border relative to the horizontal axis from 40 to 55 degrees so as to suit consumer demand.

As to Claims 11, 17, and 18, Charrin discloses a decorative assembly (Figs. 1-4) comprising a decorative cover (Figs. 1-4) having a closed lower end, an open upper end, an outer peripheral surface, an object retaining space and a horizontal axis; a decorative border (region around 7 of Figs. 2-4) connected to the base and extending open upper end of the base so as to be disposed at an upward and outward angle with respect to the open upper end of the base (angle shown in Figs. 3 and 4), the border having a curvilinear, undulating configuration (shown in Figs. 3 and 4) which permits the border to hold, support and cushion individual leaves when the plant is disposed in the object retaining space. Not disclosed is a plant with substantially horizontal growth; and, the length of the border greater than at least a portion of the leaves and petioles of the plant when positioned on the border and the angle of the border decreases so the border moves to a compressed condition. Ward, however, discloses a plant with substantially horizontal growth (col. 1 lines 55-60) which would have the length of the border greater than at least a portion of the leaves and petioles of the plant when positioned on the border and the angle of the border decreases so the border moves to a compressed condition (inherent in that the weight of the plant leaves would exert a force downward on the border causing the angle to change). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Charrin by using an African violet as disclosed by Ward so as to meet consumer demand.

As to Claim 12, Charrin as modified by Ward further disclose a cover constructed of a flexible sheet, non-shape sustaining material (Fig. 1 of Charrin) and the cover that is flexible, resilient, and shape-sustaining (Fig. 4 of Charrin).

As to Claim 13, Charrin as modified by Ward further disclose polymeric film (abstract in English of Charrin).

As to Claim 14, Charrin as modified by Ward further disclose coloring (Fig. 4 of Charrin).

As to Claim 15, Charrin as modified by Ward further disclose a plurality of bondingly connected overlapping folds (inherent in cover of Charrin in Fig. 4).

As to Claim 16, Charrin as modified by Ward further disclose the sheet a thickness of from 0.1 to 30 mil (inherent in cover of Charrin in Fig. 4).

As to Claims 19-21, the limitations of Claim 11 are disclosed as described above. Not disclosed is the angle of the border relative to the horizontal axis from 40 degrees. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Charrin as modified by Ward by having the angle of the border relative to the horizontal axis from 40 degrees so as to suit consumer demand.

As to Claims 22, 28, and 29, Charrin discloses a decorative assembly (Figs. 1-4) comprising a decorative cover (Figs. 1-4) having a closed lower end, an open upper end, an outer peripheral surface, an object retaining space and a horizontal axis; a decorative border (region around 7 of Figs. 2-4) connected to the base and extending open upper end of the base so as to be disposed at an upward and outward angle with respect to the open upper end of the base (angle

Art Unit: 3643

shown in Figs. 3 and 4), the border having a curvilinear, undulating configuration (shown in Figs. 3 and 4) which permits the border to hold, support and cushion individual leaves when the plant is disposed in the object retaining space. Not disclosed is a plant with substantially horizontal growth; and, the length of the border greater than at least a portion of the leaves and petioles of the plant positioned on the border and the angle of the border decreases so the border moves to a compressed condition. Ward, however, discloses a plant with substantially horizontal growth (col. 1 lines 55-60) which would have the length of the border greater than at least a portion of the leaves and petioles of the when the plant positioned on the border and the angle of the border decreases due to the weight of the leaves and petioles so the border moves to a compressed condition (inherent in that the weight of the plant leaves would exert a force downward on the border causing the angle to change). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Charrin by using an African violet as disclosed by Ward so as to meet consumer demand. The cover of Charrin as modified by Ward inherently perform the method steps recited in Claim 22.

As to Claim 23, Charrin as modified by Ward further disclose a cover can be flattened or unflattened (Figs. 1-4 of Charrin).

As to Claim 24, Charrin as modified by Ward further disclose a plurality of bondingly connected overlapping folds (inherent in cover of Charrin in Fig. 4).

As to Claim 25, Charrin as modified by Ward further disclose polymeric film (abstract in English of Charrin).

As to Claim 26, Charrin as modified by Ward further disclose coloring (Fig. 4 of Charrin).

Art Unit: 3643

As to Claim 27, Charrin as modified by Ward further disclose the sheet a thickness of from 0.1 to 30 mil (inherent in cover of Charrin in Fig. 4).

As to Claims 30-32, the limitations of Claim 22 are disclosed as described above. Not disclosed is the angle of the border relative to the horizontal axis from 40 degrees. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the cover of Charrin as modified by Ward by having the angle of the border relative to the horizontal axis from 40 degrees so as to suit consumer demand.

Response to Arguments

Applicant's arguments filed 22 December 2004 have been fully considered but they are not persuasive. The crux of Applicant's arguments are: (1) Charrin does not disclose a decorative border adapted to hold, support, and cushion individual leaves of a plant having substantially horizontal growth so as to prevent damage thereto (Remarks page 22, lines 9-12); (2) the string of Charrin would cause the cover to resist downward compression (Remarks page 22, lines 13-15); (3) Charrin does not disclose the length of the border being greater than at least a portion of the leaves or petioles of the plant positioned on the border (Remarks page 22, lines 17-21); and (4) Ward does not correct the deficiencies of Charrin and, in fact, supplies a gentle upward pressure (Remarks page 23, 1st complete para.).

As to argument (1), Examiner considers the border of Charrin to be decorative (in that all border are decorative) and adapted to hold, support, and cushion individual leaves of a plant having substantially horizontal growth because any border of the shape of Charrin would inherently hold, support, and cushion leaves of the correct size and shape. The physics of a

cover and leaves dictates that the border will support the leaves. If the cover of Charrin is covering a potted plant with leaves of the correct size and shape then the cover of Charrin would perform the tasks (limitations) in the instant application's independent claims.

As to argument (2), the string of Charrin might cause the border/cover of Charrin to resist downward pressure but a downward pressure would exist. Plants with leaves of the correct size and shape, therefore, would cause the border to compress.

As to argument (3), Ward discloses growing a plant with leaves and petioles in a pot with a cover that supports these leaves and petioles. When Charrin is used with the plant of Ward some of the leaves some of the time would fall within the limitation for length of the instant claim language because leaves start small and grow larger. At some point the leaves would fit Applicant's claim limitation.

As to argument (4), Ward is used to teach growing a plant in a pot with a cover, the leaves of a plant having substantially horizontal growth. Charrin discloses the cover.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 3643

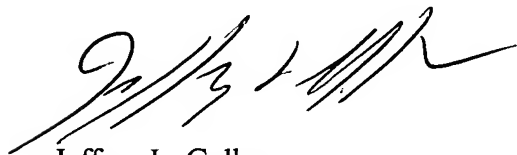
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053 (after 4 April 2005 use: 571.272.6887). The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner
Primary Examiner